

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEN-CEN, INC.
3301 Lancaster Pike
Wilmington, Delaware

Defendant.

Case No.

COMPLAINT TO ENFORCE INTERNAL REVENUE SUMMONS

PLAINTIFF, the United States of America, by and through its attorneys, shows unto this Court as follows:

1. This proceeding is brought pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) (2000) to judicially enforce an administrative summons issued by the Internal Revenue Service.

JURISDICTION & VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 (2000) and 26 U.S.C. §§ 7402(b) and 7604(a) (2000).

3. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(b)(1) & (2) (2000) and 26 U.S.C. § 7604(a), in that the summoned party resides, is found, and/or conducts business or maintains records in this judicial district.

PARTIES

4. Plaintiff, the United States of America, is the sovereign.

5. Defendant, Ben-Cen, Inc., is a Delaware corporation, with a business address of 3301 Lancaster Pike, Wilmington, Delaware within the jurisdiction of this Court.

CLAIM FOR RELIEF

6. Thomas Anastasia is a special agent, employed by Internal Revenue Service Criminal Investigations Division.

7. In Special Agent Anastasia's capacity as a special agent, he is conducting an investigation concerning the Federal income tax liabilities of Russell D. Applegate. The purpose of the investigation is to determine the Federal income tax liabilities of Russell D. Applegate for the years 1999, 2000, 2001, 2002, 2003, and 2004.

8. Based on information developed during Special Agent Anastasia's investigation, Russell D. Applegate is an officer and majority shareholder of Ben-Cen, Inc.

9. In furtherance of the investigation of Applegate, and in accordance with 26 U.S.C. § 7602, on July 28, 2005, Special Agent Anastasia issued an administrative summons, Internal Revenue Service Form 2039, to Ben-Cen, Inc. The summons directed Ben-Cen, Inc. to give testimony and to produce for examination on August 8, 2005, corporate records as described in the attachment to the summons. The summons requested information of Ben-Cen, Inc. in connection with the tax years 1999, 2000, 2001, 2002, 2003, and 2004, as more fully described in the attachment to the summons. Special Agent Anastasia served the summons on Ben-Cen, Inc. on July 28, 2005, by personally handing a copy of the summons to Russell D. Applegate.

10. Ben-Cen, Inc. did not appear on August 8, 2005 to give testimony or to produce for examination the corporate records as described in the attachment to the summons. As of December 19, 2005, Ben-Cen, Inc. had not appeared to give testimony and has not produced any records for examination.

11. The corporate records sought by the July 28, 2005 summons directed to Ben-Cen, Inc. are not in the possession of the Internal Revenue Service.

12. All administrative steps required by the Internal Revenue Code for issuance of the summons have been followed.

13. It is necessary to obtain the testimony and to examine the books, records, papers, and other data sought by the summons directed to Ben-Cen, Inc. in order to determine the correct amount of individual income tax for Russell D. Applegate for the years 1999, 2000, 2001, 2002, 2003 and 2004.

16. No "Justice Department referral" is in effect with respect to Russell D. Applegate. More specifically, the Internal Revenue Service has not made a recommendation to the Department of Justice for a grand jury investigation or criminal prosecution of Russell D. Applegate for the tax years under investigation. The Internal Revenue Service also is not delaying a recommendation to the Department of Justice in order to collect additional information. Moreover, the Department of Justice has not made any request under 26 U.S.C. § 6103(h)(3)(B) for the disclosure of any return or return information (as those terms are defined in 26 U.S.C. § 6103(b)) relating to Russell D. Applegate.

WHEREFORE, plaintiff, the United States of America, prays:

A. That the Court order defendant, Ben-Cen, Inc., to obey the summons served upon it, and each and every requirement thereof, and order the attendance and testimony of defendant, and the production of the records, papers, and other data as required by the terms of the summons before Special Agent Thomas Anastasia, or any authorized officer of the Internal Revenue Service, at such time and place as may be fixed by Special Agent Anastasia or any authorized officer of the Internal Revenue Service;


B. That the United States recover its costs in maintaining this action; and

C. That the Court render such other and further relief as is just and proper under the circumstances.

DATE: January 3, 2006.

Respectfully submitted,

COLM F. CONNOLLY
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